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Supreme Court, U.S.
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No. 99-1348

IN THE
Supreme Court of the United States

BVR LIQUIDATING, INCORPORATED, formerly known as BEAVER PRECISION PRODUCTS, INC.; and UNITRON, INC.,
Petitioners,

v.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, AND ITS LOCAL UNION NO. 540; RICHARD POLLARD; RONALD MANKE; THOMAS ELDON; and ALLEN LAWRENCE,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF IN OPPOSITION

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COUNTERSTATEMENT OF QUESTIONS PRESENTED

Whether the Sixth Circuit correctly determined that the 1988 collective bargaining agreement between the parties did not terminate vested retiree health care benefits.

TABLE OF CONTENTS

	Page
COUNTERSTATEMENT OF QUESTIONS PRESENTED	i
TABLE OF AUTHORITIES	iv
COUNTERSTATEMENT OF THE FACTS	1
REASONS FOR DENYING THE WRIT	3
I. THE SIXTH CIRCUIT CORRECTLY APPLIED TRADITIONAL TOOLS OF CONTRACT CONSTRUCTION	5
II. THERE IS NO SPLIT IN THE CIRCUITS	10
CONCLUSION	14

TABLE OF AUTHORITIES

Cases	Page
Anderson v. Alpha Portland Industries, Inc., 836 F.2d 1512 (8th Cir. 1987), *cert. denied sub nom. Anderson v. Slattery Group, Inc.*, 489 U.S. 1051 (1989)	7, 11, 12, 13
Armistead v. Vernitron Corp., 944 F.2d 1287 (6th Cir. 1991)	7
Bidlack v. Wheelabrator Corp., 993 F.2d 603 (7th Cir. 1993), *cert. denied*, 510 U.S. 909 (1993)	4, 7, 10, 11, 14
Gable v. Sweetheart Cup Co., Inc., 35 F.3d 851 (4th Cir. 1994), *cert. denied*, 514 U.S. 1057 (1995)	4
Golden v. Kelsey Hayes, 73 F.3d 648 (6th Cir. 1996), *cert. denied*, 519 U.S. 807 (1996)	4, 9
Helwig v. Kelsey Hayes, 93 F.3d 243 (6th Cir. 1996), *cert. denied*, 519 U.S. 1059 (1997)	4, 10
International Association of Machinists v. Masonite Corporation, 122 F.3d 228 (5th Cir. 1997)	7, 10, 11, 12, 13
Jensen v. Sipco, Inc., 38 F.3d 945 (8th Cir. 1994), *cert. denied*, 514 U.S. 1050 (1994)	4
John Marrell & Co. v. United Food and Commercial Unions, 37 F.3d 1302 (8th Cir. 1994), *cert. denied*, 515 U.S. 1105 (1995)	4
Keffer v. H.K. Porter Company, Inc., 872 F.2d 60 (4th Cir. 1989)	7
Local Union No. 150-A, UFCW v. Dubuque Packing Co., 756 F.2d 66 (8th Cir. 1985)	14
Merk v. Jewel Companies, Inc., 848 F.2d 761 (7th Cir. 1988), *cert. denied*, 488 U.S. 956 (1988)	4
Sengpeil v. B. F. Goodrich Co., 156 F.3d 660 (6th Cir. 1998), *cert. denied*, 119 S.Ct. 1249 (1999); 143 L. Ed. 2d 347 (1998)	4, 11
Smith v. ABS Industries, 890 F.2d 841 (6th Cir. 1989)	7
Sprague v. General Motors Corp., 133 F.3d 388 (6th Cir. 1998), *cert. denied*, 524 U.S. 923 (1998)	4, 11

TABLE OF AUTHORITIES—Continued

Page

UAW v. Skinner Engine Company, 188 F.3d 130 (3d Cir. 1999) 8, 10, 11, 13

UAW v. Yard-Man, Inc., 716 F.2d 1476 (6th Cir. 1983), *cert. denied*, 465 U.S. 1007 (1984) ..... *passim*

United Paperworkers v. Champion International Corporation, 908 F.2d 1252 (5th Cir. 1990) 7, 13

United Steelworkers of America v. Connors Steel, 855 F.2d 1399 (11th Cir. 1988) 7

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BRIEF IN OPPOSITION

COUNTERSTATEMENT OF THE FACTS

Prior to 1988 the company and the UAW [1] agreed in collective bargaining to vested, lifetime retiree health care

[1] Petitioners Unitron, Inc. and BVR Liquidating, Incorporated will be referred to collectively as "the company" in this Brief. Respondent International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) and its affiliated Local Union 540 will be referred to collectively as "the UAW".

benefits. The company concedes this. (Apdx. A4, Apdx. E2-3)[2] The pre-1988 collective bargaining agreement between the parties states that:

> **9B. Employees Who Retire On or After June 1, 1985**
>
> Employees who retire on or after June 1, 1985 shall have paid-up life insurance in the amount of $2,500 and shall have the hospital-surgical-medical (excluding hearing and vision) and prescription drug coverages set forth in Section 6 of this Insurance Agreement *continued after retirement until their date of death.* All other group insurance shall be terminated as of the date of retirement.

(Joint Appendix, page 436, emphasis added)

Because of the "until . . . death" language, those vested benefits, as originally negotiated, ended when a retiree died. Surviving spouses and dependents received no benefits. (Apdx. A4) During 1988 negotiations, the UAW proposed that these vested retiree health care benefits be expanded to continue after a retiree's death for the retiree's surviving spouse and dependents. The company agreed. (Apdx. E3, 6-13, 21-22) The company then revised the contractual language to effectuate that agreement. The new language stated that employees who retired after July 1, 1988 shall have paid up medical benefits ". . . continued for themselves, their spouses, surviving spouses, and eligible dependents." (Apdx. A5, footnote 5, Section 9C) The previous "until . . . death" language, which limited benefits to the lifetime of the retiree, was replaced to make clear that benefits continued

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[2] References to the Petition for Certiorari will be in the form Pet. Brief —; references to the Appendices to the Petition for Certiorari will be in the form Apdx. —; references to the Joint Appendix before the Sixth Circuit will be in the form Joint Appendix —.

for the surviving spouse of employees who retired after July 1, 1988. (Apdx. A4-5, footnote 5, Section 9C)

Nine years later, the company abruptly shut down and terminated all its UAW-represented employees. (Apdx. A5) At that time, for the first time, the company began claiming that the parties had agreed during 1988 negotiations to terminate the vested retiree health care. The company's claim, which it continues to press before this Court, is this: the language the company drafted in 1988 to effectuate the negotiated agreement to *expand* retiree health care to surviving spouses was actually intended by the parties to *terminate* vested retiree health care. As the Sixth Circuit and the District Court found, this is simply not true. The company never proposed ending the vested lifetime retiree health care benefits during 1988 negotiations. There was no discussion of termination of vested benefits. (Apdx. A14-15, Apdx. E6-14, E21-22) Indeed, the company's last offer in negotiations stated that the 1988 improvements in retiree health care benefits would be "in addition to benefits they are already receiving." (Apdx. E3)

REASONS FOR DENYING THE WRIT

Nothing about this case is worthy of review by this Court. The task performed by the court below involved nothing more than a garden-variety exercise in contract interpretation.

This dispute centers on the meaning of a 1988 change in contract language. The company claims that the 1988 language was intended to sharply diminish the company's future obligations with respect to retirees. The retirees argue that the 1988 language was intended to expand eligibility to include surviving spouses and dependents, but to leave the durational commitment otherwise un-

changed. The district court and the Sixth Circuit each examined the evidence offered by the parties and—applying traditional tools of contract construction—unanimously concluded that the contract interpretation offered by the retirees was the correct one.

By definition, cases presenting questions of contract interpretation are fact specific. As the Sixth Circuit's decision shows, interpreting contract language is an exercise in details. The tools for approaching that task are nothing more complex or controversial than hornbook principles of contract construction. No overarching theory dictates the results of these cases. Instead, each case must be examined based on the details of its own particular language and history. Petitioners' dissatisfaction with the results of that exercise in this case is no basis for review by this Court.

Not surprisingly, this Court has declined invitations to review retiree health care contractual disputes at least ten times.[3]

As we show in Part I, Petitioners are entirely incorrect in claiming that the Sixth Circuit has parted company with

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[3] See: *Gable v. Sweetheart Cup Co., Inc.*, 35 F.3d 851 (4th Cir. 1994), *cert. denied*, 514 U.S. 1057 (1995); *Golden v. Kelsey-Hayes*, 73 F.3d 648 (6th Cir. 1996), *cert. denied*, 619 U.S. 807 (1996); *Helwig v. Kelsey-Hayes*, 93 F.3d 243 (6th Cir. 1996), *cert. denied*, 519 U.S. 1059 (1997); *Sengpiel v. B. F. Goodrich Co.*, 156 F.3d 660 (6th Cir. 1998), *cert. denied*, 119 S.Ct. 1249 (1999); 143 L. Ed. 2d 347 (1999); *Sprague v. GM*, 133 F.3d 388 (6th Cir. 1998), *cert. denied*, 524 U.S. 923 (1998); *UAW v. Yard-Man, Inc.*, 716 F.2d 1476 (6th Cir. 1983), *cert. denied*, 465 U.S. 1007 (1984); *Bidlack v. Wheelabrator Corp.*, 993 F.2d 603 (7th Cir. 1993), *cert. denied*, 510 U.S. 909 (1993); *Merk v. Jewel Companies, Inc.*, 848 F.2d 761 (7th Cir. 1988), *cert. denied*, 488 U.S. 956 (1988); *Jensen v. Sipco, Inc.*, 38 F.3d 945 (8th Cir. 1994), *cert. denied*, 514 U.S. 1050 (1994); *John Merrell & Co. v. United Food and Commercial Unions*, 37 F.3d 1302 (8th Cir. 1994), *cert. denied*, 515 U.S. 1105 (1995).

its sister circuits by endorsing an outcome-determinative rule of contract construction in favor of retirees. The Sixth Circuit, like every other circuit to consider these cases, applied standard tools of contract interpretation to examine the details of the contract language and history in the cases presented to it in order to resolve the competing claims of the contracting parties.

As we show in Part II, Petitioners are also incorrect in claiming that there is disagreement among the circuits on the nature of the task to be performed when courts are presented with varying interpretations of collectively-bargained promises of post-retirement medical benefits. Rather, all of the courts to review these cases have utilized traditional tools of contract interpretation.

I. THE SIXTH CIRCUIT CORRECTLY APPLIED TRADITIONAL TOOLS OF CONTRACT CONSTRUCTION

The company concedes that it agreed in collective bargaining to vested, lifetime retiree health care. (Apdx. A4, E2-3) It claims, however, that the parties agreed in 1988 to terminate those vested benefits. These unusual facts make this case unique. In every other case cited by the company, the issue presented was whether an employer had ever taken the significant step of committing to pay lifetime retiree health care in the first place. The issue here is quite different: whether the union agreed in 1988 to the equally momentous step of *terminating* lifetime retiree health care.

The Sixth Circuit's decision was based on uncontradicted and overwhelming evidence, both contractual and extrinsic, that the parties did not intend to terminate vested retiree health care rights in 1988. The Sixth Circuit examined the relevant contractual provisions at

length, noting that Section 9 of the applicable insurance Agreements unambiguously provided for vested retiree health care benefits for pre- and post-1988 retirees. Because a general durational [4] term set forth elsewhere in the Insurance Agreement cast some uncertainty over the Section 9 vesting language, however, the Sixth Circuit found the contract as a whole to be ambiguous. (Apdx. A12-13) The Sixth Circuit therefore turned to extrinsic evidence:

> Although the language of Section 9C of the CBA appears unambiguous, it becomes ambiguous when read in light of Section 1A. Applying principles of contract interpretation, it is appropriate to consider extrinsic evidence to discern the intent of the parties when the contract language is ambiguous.

(Apdx. A15)

Consideration of the available extrinsic evidence quickly disposed of the company's claim that the parties intended to terminate the vested retiree health care benefits in 1988. As noted above in the Counterstatement of facts, there is no dispute that, prior to 1988, the company had agreed to vested benefits. In bargaining in 1988, there was no proposal to end vested benefits, no discussion of such a drastic step, and not the slightest hint that the parties intended to terminate the vested benefits. (Apdx. A13, 15; Apdx. E6-14, and E21-22) Most tellingly, even the company's written final proposal during

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[4] The company mischaracterizes the general durational clause in paragraph 1A of the Insurance Agreement. The company implies that the provision applied only to "retiree benefits". (Pet. Brief, p. 6.) In fact, Section 1A applied generally to the entire Insurance Agreement, which primarily provided benefits for active employees, not retirees. (Jt. Appendix 444-494) Section 9 of the Insurance Agreement sets forth the vesting language which specifically excepts retiree insurance benefits from the general duration clause.

1988 bargaining stated that the negotiated 1988 improvements in retiree health care benefits would be "in addition to benefits they are already receiving." [5] (Apdx. E3)

Based on these compelling factual findings, both the district court and the Sixth Circuit reached the same conclusion: the parties in 1988 did not intend to terminate post-retirement medical benefits.

The company quarrels with the Sixth Circuit's use of extrinsic evidence to determine the intent of the parties. The rule that courts may resort to extrinsic evidence when faced with an ambiguous contract is a commonplace of contract construction. The courts have routinely applied this rule in the context of collectively-bargained promises of post-retirement medical benefits. Because of the fact-dependent nature of these cases, courts have almost always found it necessary to examine extrinsic evidence to determine whether the parties to collective bargaining agreements intended to establish vested benefits.[6] In rare cases the courts have found that written language unambiguously promises retirees vested health care [7], or clearly

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[5] The Sixth Circuit observed after examining these facts that it was unlikely that parties intended to make a dramatic change in the existing collective bargaining agreement without even a mention of such a change during bargaining. (Apdx. A13) Contrary to Petitioners' assertions, such a common sense observation is neither new nor controversial. See, e.g., *Armistead v. Vernitron Corp.*, 944 F.2d 1287, 1296 (6th Cir. 1991).

[6] See, for example, *Keffer v. H.K. Porter Company, Inc.*, 872 F.2d 60, 64 (4th Cir. 1989); *International Association of Machinists v. Masonite Corporation*, 122 F.3d 228, 233 (5th Cir. 1997); *United Paperworkers v. Champion International Corporation*, 908 F.2d 1252, 1261 (5th Cir. 1990); *Smith v. ABS Industries*, 890 F.2d 841, 846 (6th Cir. 1989); *Bidlack v. Wheelabrator Corp.*, 993 F.2d 603, 609-610 (7th Cir. 1993); *Anderson v. Alpha Portland Industries, Inc.*, 836 F.2d 1512, 1518 (8th Cir. 1988), *cert. denied sub nom., Anderson v. Slattery Group, Inc.*, 489 U.S. 1051 (1989).

[7] See *United Steelworkers of America v. Connors Steel*, 855 F.2d 1499, 1504 (11th Cir. 1988).

does not.[8] There is simply no disagreement on the application of this fundamental principle.

The company attempts to dress up its complaint about the use of extrinsic evidence as an attack on an "inference" articulated seventeen years ago by the Sixth Circuits as a factor in deciding retiree health care cases. *UAW v. Yard-Man, Inc.*, 716 F.2d 1476 (6th Cir. 1983), *cert. denied*, 465 U.S. 1007 (1984). That inference, however, played no role in the determination that the contract in this case was ambiguous, or in the court's examination of extrinsic evidence to resolve that ambiguity.[9]

The inference in question has not been outcome determinative in this or any other case.[10] As the decision

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[8] See *International Union, UAW v. Skinner Engine Co.*, 188 F.3d 130, 135 (3d Cir. 1999).

[9] The company claims that the Sixth Circuit's finding of ambiguity in this case was somehow the product of an "inference" articulated in the earlier Sixth Circuit decision in *UAW v. Yard-Man, Inc.*, 716 F.2d 1476 (6th Cir. 1983), *cert. denied*, 465 U.S. 1007 (1984). (Pet. Brief, p. 4) That is simply not true. Pages 11-12 of the Sixth Circuit's decision set forth a careful examnation of the written contract terms. (Apdx. A11-12) As that analysis makes clear, the Sixth Circuit found the contract ambiguous by reading the written contract, not by applying any inference. The only mention of *Yard-Man* in that analysis is this: "Although the language of Section 9C is unambiguous, *Yard-Man* requires us to read each provision in light of the agreement as a whole." Thus, the *Yard-Man* guideline of which the company complains is a commonplace rule of construction: that a contract's terms should be read together and, if possible, harmonized. The Sixth Circuit resolved the ambiguous contract by reviewing bargaining history which showed unequivocally that the parties did not intend to abolish vested retiree health care in 1988.

[10] The Sixth Circuit described the *Yard-Man* rules of contract construction, including the *Yard-Man* inference, at the start of its decision. (Apdx. A8-9) That recitation—that the courts should first look to the four corners of a contract, examine extrinsic evi-

below makes plain, the "inference" is nothing more than the observation that retirees have no bargaining rights after they retire, and it is therefore unlikely, absent other factors, that retiree health care benefits, "which are typically understood as a form of delayed compensation . . . would be left to the contingencies of future negotiations." *UAW v. Yard-Man*, 716 F.2d 1476, 1482.

The court below—echoing prior Sixth Circuit decisions—noted the extremely limited effect of this factor:

> *Yard-Man* does not shift the burden of proof to the employer, nor does it require specific anti-vesting language before a court can find that the parties did not intend benefits to vest. Rather, the *Yard-Man* inference, and the other teachings of the opinion regarding contract interpretation and the consideration of extrinsic evidence, simply guide courts faced with the task of discerning the intent of the parties from vague or ambiguous CBA's.

(Apdx. A9, quoting from *Golden v. Kelsey Hayes*, 73 F.3d 648, 656 (6th Cir. 1996), *cert. denied*, 519 U.S. 807 (1996))

Thus, contrary to the arguments advanced by Petitioners, *Yard-Man* does not create an outcome-determinative rule favoring vesting of retiree medical benefits. To the contrary, the *Yard-Man* analysis merely requires that courts faced with the task of interpreting "vague or ambiguous" collective bargaining agreements consider the context in which those agreements arise. The consideration thus mandated does not dictate outcome; it merely assures that all relevant evidence of intent will be considered.

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dence if the contract language is ambiguous, and consider the context where a contract is collectively bargained—is now boilerplate.

In fact, there is not a single case in the Sixth Circuit or elsewhere in which the application *vel non* of the "inference" was dispositive. Instead, the outcome of these cases depends on a detailed examination of the contract language and, if necessary to resolve contractual ambiguity, on other evidence bearing on the intent of the contracting parties.

No overarching rule of contract construction resolves these fact-dependent cases, and none can. For that reason, it is not surprising that this Court has denied certiorari in ten cases presenting these kinds of contractual disputes regarding the duration of retiree health care promises.[11]

II. THERE IS NO SPLIT IN THE CIRCUITS

Petitioners argue strenuously that the Circuits have adopted different approaches in deciding retiree health cases, pointing out that employers have prevailed in some retiree insurance disputes while retirees have prevailed in others. But that lack of unanimity of result reflects nothing more than the variety of contractual provisions and factual circumstances addressed by the courts below. No two of these cases are alike. The variation in outcome results from the different facts of each case, and not from any difference in the rules of contractual interpretation.

The Sixth Circuit's formulation of contractual interpretation principles has not resulted in decisions that vary in any way with other Circuits. The core rules of interpretation which have been unanimously endorsed by the Circuits are pure hornbook law: 1) welfare benefits do not automatically vest; [12] 2) the parties to a collective bar-

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[11] See cases cited at footnote 8 above.

[12] See *Helwig v. Kelsey Hayes*, 93 F.3d 243, 248 (6th Cir. 1996), *cert. denied*, 519 U.S. 1059 (1997); *UAW v. Skinner Engine Co.*, 188 F.3d 130, 137 (3d Cir. 1999); *Machinists v. Masonite Corporation*, 122 F.3d 228, 231 (5th Cir. 1997); *Bidlack v. Wheelabrator*

gaining agreement may nevertheless agree to vest retiree health care benefits;[13] and 3) extrinsic evidence may be considered if a contract is ambiguous on the question of whether parties intended retiree benefits to vest.[14] Each of the Circuits has applied these rules to widely varying factual situations. All have reached results consistent with their sister Circuits.[15]

The Circuit cases the company claims to be in conflict would have been decided exactly the same by the Sixth Circuit. The company argues that four circuits—the Seventh, Fifth, Eighth, and Third—have rendered decisions in conflict with the Sixth Circuit. The company is incorrect in each case.

Bidlack v. Wheelabrator Corp., 993 F.2d 603 (7th Cir. 1993), *cert. denied*, 510 U.S. 909 (1993), is the poster

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Corp., 993 F.2d 603, 604-605 (7th Cir. 1993); and *Anderson v. Alpha Portland Industries, Inc.*, 838 F.2d 1512, 1516 (1987).

[13] See *UAW v. Yard-Man*, 716 F.2d 1476, 1479; *UAW v. Skinner Engine Co.*, 188 F.3d 130, 138; *Machinists v. Masonite Corporation*, 122 F.3d 228, 231; *Bidlack v. Wheelabrator Corp.*, 993 F.2d 603, 607; *Anderson v. Alpha Portland*, 836 F.2d 1512, 1516.

[14] See *UAW v. BVR Liquidating* (Apdx. A2, 12); *UAW v. Skinner*, 188 F.3d 130, 138; *Machinists v. Masonite Corporation*, 122 F.3d 228, 233; *Bidlack v. Wheelabrator Corp.*, 993 F.2d 603, 608-609; *Anderson v. Alpha Portland, Inc.*, 836 F.2d 1512, 1517.

[15] The company also asserts that the Sixth Circuit decision in this case is in conflict with other Sixth Circuit decisons, specifically *Sengpeil v. B. F. Goodrich Company*, 156 F.2d 660 (6th Cir. 1998) and *Sprague v. General Motors Corp.*, 133 F.3d 388 (6th Cir. 1998), *cert. denied*, 524 U.S. 923 (1998). A cursory review reveals the company's error. As the Sixth Circuit pointed out in this case, both *Sengpeil* and *Sprague* addressed unilaterally-promulgated employer health care plans which contained reservation of rights provisions unmistakably reserving to the employer the right to terminate retire health care. Neither *Sengpeil* nor *Sprague* mentions the portion of the *Yard-Man* decision applicable to collectively bargained contracts because neither *Sengpeil* nor *Sprague* involved a collective bargaining agreement. (Apdx. A10-11)

child for the company's argument regarding a split among the circuits. In Bidlack, the seventh Circuit examined a collectively bargained agreement which stated that the company would pay the cost of retirees' health insurance and that the insurance "shall be continued for the spouse after the death of the retiree." *Wheelabrator*, 606. The Seventh Circuit found this language to be ambiguous on the question of whether the parties intended to vest retiree health care rights, and remanded for consideration of extrinsic evidence of intent. That is exactly the approach taken by the Sixth Circuit in this case with respect to similar language. Petitioners are simply wrong in claiming that the Seventh Circuit rejected *Yard-Man*.

In *International Association of Machinists v. Masonite Corporation*, 122 F.3d 228 (5th Cir. 1997), the Fifth Circuit addressed collectively-bargained language which stated that retirees were entitled to certain medical benefits ". . . until the death of the retired employee." This language was set forth in an insurance agreement which stated that "its term is coincident with that of the [CBA]". *Masonite*, 232-233. The Fifth Circuit found this language ambiguous on the question of intent to vest, and remanded for consideration of extrinsic evidence. *Masonite*, 233. Again, this is exactly the approach taken by the Sixth Circuit in examining similar language.

The Eighth Circuit, in *Anderson v. Alpha Portland Industries, Inc.*, 836 F.2d 1512 (8th Cir. 1987) examined collectively bargained retiree health care language which stated that the company would pay medical benefits "until the death of retiree". Extrinsic evidence demonstrated that the "until the death" language was specifically inserted after the union sought, and did not obtain, a bargaining agreement change to continue benefits for surviving spouses after a mid-contract retiree death. The court ruled that the "until the death" language was inserted only to

make clear that a surviving spouse did not continue to receive benefits in such a situation. *Anderson,* 1518. This bargaining history analysis underscores the fact-dependent nature of these cases.

Finally, in *UAW v. Skinner Engine Company,* 188 F.3d 130 (3d Cir. 1999), the Third Circuit focused on language which stated that the company "will continue to provide" medical coverage. *Skinner,* 135. There was no mention of retirees in that language. The Third Circuit therefore held that the language in question was unambiguous and did not provide for vested benefits. This analysis squares with the Sixth Circuit's decisions and those of every other Circuit. All Circuits have required language indicating a specific intent to continue health care benefits *for retirees* in order to find vested retiree benefits. Although the Third Circuit also stated in dicta that it disagreed with the *Yard-Man* inference, there is little doubt that the Sixth Circuit, faced with the same facts recited by the Third Circuit, would have reached the same result.

It is true, as Petitioners note, that some of these Circuits have balked at the use of the term "inference" in describing the tools used to interpret collectively bargained contracts. None of these Circuits, however, reject consideration of the contextual factors identified by the Sixth Circuit. Every Circuit addressing that question has noted the relevance of those factors. For example, in the Fifth Circuit case cited by Petitioners, *International Association of Machinists v. Masonite,* 122 F.3d 228 n.1 (5th Cir. 1997), the court stated:

> This court noted in [*United Paperworks v. Champion,* 908 F.2d 1252, 1261 (5th Cir. 1990)] that "the fact that retirees have no voice in negotiating a new collective bargaining agreement" may be con-

> sidered by the district court as "some evidence of intent" to vest retirement benefits. [citation omitted]

See also *Local Union No. 150-A, UFCW v. Dubuque Packing Co.*, 756 F.2d 66, 70 (8th Cir. 1985); and *Bidlack v. Wheelabrator Corp.*, 993 F.2d 603, 609, 612 (7th Cir. 1993).

As the Circuit decisions show, these cases turn on the particular facts of each case, not on any one contractual interpretation principle. There is no substantive conflict between the Circuits.

CONCLUSION

For the reasons set forth above, the Petition should be denied.

Respectfully submitted,

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